

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DAVID GOLDSTINE,

Plaintiff,

v.

FEDEX FREIGHT, INC.,

Defendant.

Case No. 2:18-cv-01164-MJP

***FOURTH AMENDED PRETRIAL  
ORDER***

Pursuant to LCR 16(h)-(i), Plaintiff David Goldstine and Defendant FedEx Freight, Inc. (hereinafter “FedEx Freight”)<sup>1</sup> jointly submit this Proposed Pre-Trial Order.

**I. JURISDICTION**

Jurisdiction is vested in this Court by virtue of: This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1331, through which district courts have jurisdiction over all civil actions arising under the Constitution, laws, and treaties of the United States. Plaintiff brings several claims against Defendant under the Americans with Disabilities Act of 1990, § 2 *et seq.*, 42 U.S.C. § 12101 *et seq.* (“ADA”).

<sup>1</sup> By submitting this Pretrial Order, Defendant FedEx Freight does not waive any objections to the remote jury proceeding proposed by the Court.

1           Additionally, this Court has subject matter jurisdiction over this case under 28 U.S.C.  
 2 § 1332. Complete diversity of citizenship exists between the parties: (a) Plaintiff David  
 3 Goldstine is a citizen of the United States and of the State of Washington; (b) Defendant FedEx  
 4 Freight is a corporation incorporated under the laws of Arkansas, with its principal place of  
 5 business in Arkansas. Defendant FedEx Freight is therefore a citizen of a foreign state.  
 6 Defendant disputes that Plaintiff is entitled to any damages. Plaintiff contends the amount in  
 7 controversy exceeds \$75,000.00.

8           Alternatively, this Court has supplemental jurisdiction over Plaintiff's state law claims  
 9 under 28 U.S.C. § 1367 because the state law claims are so closely related to the federal law  
 10 claims as to form the same case or controversy under Article III of the U.S. Constitution.  
 11 Plaintiff's state law claims brought under the Washington Law Against Discrimination, RCW  
 12 49.60 *et seq.* ("WLAD") and his claims brought under the ADA arise from a common nucleus  
 13 of operative fact.

14           This Court has personal jurisdiction over Defendant FedEx Freight. Jurisdiction is  
 15 established because Defendant conducted business in the state of Washington, both generally  
 16 and particularly as it regards the acts and omissions at issue here, generating a sufficient nexus  
 17 between Defendant's forum contacts and Plaintiff's causes of action.

18           Venue is proper in the United States District Court, Western District of Washington,  
 19 under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise  
 20 to Plaintiff's causes of action occurred within the Western District of Washington's geographic  
 21 scope.

22           Defendant removed this case from the Superior Court of the State of Washington,  
 23 County of Snohomish to the Western District of Washington at Seattle. A substantial part of

1 the events from which Plaintiff's causes of action arise occurred in Snohomish County,  
2 Washington. As such, under LCR 3(e), Intradistrict Assignment to the Western District of  
3 Washington at Seattle is proper.

4 **II. CLAIMS AND DEFENSES**

5 Plaintiff David Goldstine will pursue at trial the following claims:

- 6 1. Disability discrimination in violation of the WLAD;
- 7 2. Retaliation in violation of the WLAD;
- 8 3. Disability discrimination in violation of the ADA; and
- 9 4. Retaliation in violation of the ADA.

10 Defendant FedEx Freight will pursue the following affirmative defenses and/or claims:

- 11 1. Mr. Goldstine failed to mitigate his claimed damages.

12 **III. ADMITTED FACTS**

13 The following facts are admitted by the parties:

- 14 1. FedEx Freight employs more than 500 employees.
- 15 2. FedEx Freight provides less-than-truckload delivery choices to customers  
16 shipping throughout the U.S., Canada, and Mexico. FedEx Freight operates approximately  
17 30,000 vehicles from a network of 373 freight service centers and has approximately 44,000  
18 employees.
- 19 3. David Goldstine began working as a full-time Road Driver for FedEx Freight  
20 on February 18, 2015.
- 21 4. He typically drove roundtrip between Washington and Oregon on the graveyard  
22 shift.

5. FedEx Freight is an interstate federal motor carrier regulated by the Federal Motor Carrier Safety Act (FMCSA), 49 C.F.R. §300 et seq.

6. Commercial truck drivers must be qualified to operate a commercial vehicle in accordance with the physical-qualification standards of the FMCSA.

7. Defendant FedEx Freight did nothing to cause or exacerbate any medical condition of Mr. Goldstine.

8. On July 25, 2017, FedEx Freight authorized Mr. Goldstine to return to work.

9. Mr. Goldstine learned on August 3, 2017 that FedEx Freight had authorized him to return to work.

### III.A. PLAINTIFF'S ADDITIONAL PROPOSED FACTS<sup>2</sup>

10. FedEx Freight earned approximately \$7.1 billion in annual revenue in 2020. John A. Smith is the President and Chief Executive Officer of FedEx Freight, which is based in Memphis, Tennessee. **ADMISSIBILITY DISPUTED BY FEDEX FREIGHT.**

11. The company is a subsidiary of the FedEx Corporation, a parent holding company that provides strategic direction to the FedEx portfolio of companies, which also includes FedEx Express, FedEx Ground, and FedEx Services. **ADMISSIBILITY DISPUTED BY FEDEX FREIGHT.**

### IV. ISSUES OF LAW

Plaintiff asserts the following issues of law to be determined by the Court:

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<sup>2</sup> Defendant objects to Plaintiff's inclusion of "additional proposed facts" which Plaintiff gleaned from the internet and which were not a topic of discovery; relate to information about Defendant's parent and affiliate companies, apparently in an effort to seek to pierce the corporate veil of Defendant to try to admit into this trial information about a different company involving a different lawsuit; attempt to unfairly prejudice Defendant based on such information; and the topics of which are the subject of a pending motion in limine.

1           **Plaintiff's Issue of Law No. 1:** Does the FMCSA require a driver to be able to lower  
2 a disabled trailer door?

3           **Plaintiff's Issue of Law No. 2:** Does the FMCSA require a driver to be able to climb  
4 into the back of a semi-trailer unassisted?

5           **Plaintiff's Issue of Law No. 3:** Does the FMCSA require a carrier to disqualify a driver  
6 upon disclosure of a pre-existing disability when the disability does not impair the driver's  
7 ability to perform his normal duties and when his current medical certificate has not expired?

8           **Plaintiff's Issue of Law Nos. 4 and 5:** Does the FMCSA require a carrier to exercise  
9 good faith and/or obtain a professional medical opinion before rejecting a medical certification  
10 on the basis that it is "falsified" or "incomplete?"

11           **Plaintiff's Issue of Law No. 6:** Does the FMCSA permit a person who is not a medical  
12 examiner and has no personal knowledge of a driver's health conditions to determine that the  
13 driver is not medically qualified under FMCSA standards?

14           **Plaintiff's Issue of Law Nos. 7 & 8.** Whether Defendant discriminated against  
15 Plaintiff under the "actual disability" prong of the Americans with Disabilities Act as Amended  
16 or the Washington Law Against Discrimination when it refused to allow him to work because  
17 of his disclosure of a disability or physical limitation even after he returned a signed DOT  
18 medical certification on April 13, 2017.

19           **Plaintiff's Issue of Law Nos. 9 & 10.** Whether Defendant discriminated against  
20 Plaintiff under the "regarded as disabled" prong of the Americans with Disabilities Act as  
21 Amended or the Washington Law Against Discrimination when it refused to allow him to work  
22 because of his disclosure of a disability or physical limitation even after he returned a signed  
23 DOT medical certification on April 13, 2017.

1           **Plaintiff’s Issue of Law Nos. 11 & 12.** Whether Defendant discriminated against  
 2 Plaintiff under the “record of disability” prong of the Americans with Disabilities Act as  
 3 Amended or the Washington Law Against Discrimination when it refused to allow him to work  
 4 because of his disclosure of a disability or physical limitation even after he returned a signed  
 5 DOT medical certification on April 13, 2017.

6           **Plaintiff’s Issue of Law No. 13:** What equitable remedies should the Court allow under  
 7 the ADA retaliation claim should the jury find a violation of the law in an advisory opinion  
 8 pursuant to FRCP 39, if FedEx Freight will not consent to a jury trial on this claim.

9           **Plaintiff’s Issue of Law No. 14:** What amount of additional *Blaney* tax liability on any  
 10 award should be awarded to Plaintiff?

11           Plaintiff notes that there may be issues of law for the Court’s determination in  
 12 connection with jury instructions and motions *in limine*.

13  
 14           Defendant asserts the following issues of law to be determined by the Court:

15           **Defendant’s Issue of Law No. 1:** Whether the FMCSA regulations require that a  
 16 driver be physically qualified to perform normal tasks associated with operating a commercial  
 17 motor vehicle, including the ability to climb, bend, crawl, lift, twist, and turn to secure trailer  
 18 doors, perform pre-trip and post trip vehicle inspections, coupling and uncoupling trailers, and  
 19 various other nondriving DOT required tasks.

20           **Defendant’s Issue of Law No. 2:** Whether a federal motor carrier is required to ensure  
 21 its drivers are medically qualified to operate a commercial vehicle as required by the FMCSA,  
 22 including that the information the driver provides to the DOT medical examiners is truthful  
 23 and complete?

**Defendant's Issue of Law No. 3:** Whether Plaintiff must prove his claimed loss of damages would not have occurred "but for" Defendant's alleged discrimination.

**Defendant's Issue of Law No. 4:** Whether Plaintiff is prevented from "double dipping" by seeking both equitable and legal remedies based on the same alleged harm?

## **V. EXPERT WITNESSES**

Each party shall be limited to 1 expert witness on the issues of Plaintiff's wage loss damages.

**(a) On behalf of Plaintiff:**

<b>Name and Address</b>	<b>General Nature of Testimony</b>
Christina Tapia, Ph.D 1416 NW 46 <sup>th</sup> St., Ste. #105 – PMB 337 Seattle, WA 98107	Christina Tapia, Ph.D is an economist who will testify regarding Plaintiff's economic damages.  Will testify.

**(b) On behalf of Defendant:**

<b>Name and Address</b>	<b>General Nature of Testimony</b>
William Partin, CPA/ABV/MAFF/CFE Mueller & Partin 400 108 <sup>th</sup> Ave NE Bellevue, WA 98004	William Partin is certified public accountant and forensic economist who will testify as a rebuttal expert regarding Plaintiff's economic loss damages.  Will testify.

## **VI. OTHER WITNESSES**

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

**(a) On behalf of Plaintiff:**

<b>Name and Address</b>	<b>General Nature of Testimony</b>
David Goldstine c/o Ada K. Wong	Mr. Goldstine is the plaintiff and will testify regarding the facts and circumstances

1	AKW LAW, P.C. 6100 219 <sup>th</sup> St. SW, Suite 480 Mountlake Terrace, WA 98043	surrounding his employment with Defendant, as well as his job duties, the discrimination, retaliation, and separation that he endured, and damages he sustained as a proximate cause of Defendant's violations of the law.
2		Will testify.
3	Jon Feldheger, PA-C c/o Eastside Family Medicine 1200 112th Ave. NE, C160 Bellevue, WA 98004	Jon Feldheger, PA-C was the medical examiner who examined Plaintiff on February 2, 2017, March 9, 2017, April 13, 2017, and June 15, 2017.
4		May testify.
5	David Hoffman, M.D. 17500 SE 392 <sup>nd</sup> St Auburn, WA 98092	Dr. Hoffman was the Regional Medical Director for U.S. Healthworks (now Concentra) in April 2017 and discussed Plaintiff's visits to U.S. Healthworks on April 13, 2017 and April 20, 2017 with Defendant.
6		Will testify.
7	Aaron Jessen c/o Medora Marisseau Karr Tuttle Campbell 701 Fifth Avenue, Suite 3300 Seattle, WA 98104	Mr. Jessen is an Operations Supervisor with Defendant, he was present during the events of April 6-7, 2017 that are the subject of Plaintiff's Amended Complaint. He's been subpoenaed to the Seattle courthouse with Plaintiff offering to pay for reasonable costs.
8	c/o Sandra Isom FedEx Freight, Inc. 1715 Aaron Brenner Drive, Ste 600 Memphis, TN 38120	Will testify.
9	David Appesland c/o Medora Marisseau Karr Tuttle Campbell 701 Fifth Avenue, Suite 3300 Seattle, WA 98104	Mr. Appesland is the Service Center Manager of Defendant's Everett, Washington facility and may testify regarding his knowledge of the discrimination, retaliation, and separation that is the subject of this lawsuit.
10	c/o Sandra Isom FedEx Freight, Inc. 1715 Aaron Brenner Drive, Ste 600 Memphis, TN 38120	Mr. Appesland also was designated as a Rule 30(b)(6) witness for Defendant. <sup>3</sup>
11	Christy Tayman c/o Medora Marisseau Karr Tuttle Campbell	Will testify.
12		Ms. Tayman is an Employee Relations Advisor with Defendant and may testify regarding her

<sup>3</sup> The designation for purposes of deposition was only for specified topics.



1	701 Fifth Avenue, Suite 3300 Seattle, WA 98104	knowledge of the discrimination, retaliation, and separation that is the subject of this lawsuit.
2	c/o Sandra Isom	Ms. Tayman was also designated as a Rule
3	FedEx Freight, Inc.	30(b)(6) witness for Defendant <sup>4</sup>
4	1715 Aaron Brenner Drive, Ste 600	Will testify.
5	Memphis, TN 38120	
6	Tammy Rogers	Ms. Rogers is a Safety Assistant with Defendant
7	c/o Medora Marisseau	and may testify regarding her knowledge of
8	Karr Tuttle Campbell	Plaintiff's medical de-certification and re-
9	701 Fifth Avenue, Suite 3300	certification.
10	Seattle, WA 98104	Ms. Rogers also was designated as a Rule
11	c/o Sandra Isom	30(b)(6) witness for Defendant.
12	FedEx Freight, Inc.	May testify.
13	1715 Aaron Brenner Drive, Ste 600	
14	Memphis, TN 38120	
15	Craig Flick	Mr. Flick is a Senior Security Specialist with
16	c/o Medora Marisseau	Defendant and may testify regarding his
17	Karr Tuttle Campbell	investigation of the subject matters involving
18	701 Fifth Avenue, Suite 3300	Plaintiff.
19	Seattle, WA 98104	Mr. Flick also was designated as a Rule 30(b)(6)
20	c/o Sandra Isom	witness for Defendant. <sup>5</sup>
21	FedEx Freight, Inc.	Will testify.
22	1715 Aaron Brenner Drive, Ste 600	
23	Memphis, TN 38120	
	Katyna Naylor	Ms. Naylor is an Employee Relations Manager
	c/o Medora Marisseau	for Defendant and may testify regarding her
	Karr Tuttle Campbell	knowledge of the policies and procedures related
	701 Fifth Avenue, Suite 3300	to FedEx Freight and as it applies to the
	Seattle, WA 98104	Operations Department. She was also
	c/o Sandra Isom	designated as a Rule 30(b)(6) witness for
	FedEx Freight, Inc.	Defendant. <sup>6</sup>
	1715 Aaron Brenner Drive, Ste 600	Will testify.
	Memphis, TN 38120	
	Dennis Raymond	Mr. Raymond has knowledge of Plaintiff's harms
	5218 11th Ave NE	and losses as a result of his employment and
	Seattle, WA 98105	separation from Defendant.
	(206) 226-3868	

<sup>4</sup> The designation for purposes of deposition was only for specified topics.

<sup>5</sup> The designation for purposes of deposition was only for specified topics.

<sup>6</sup> The designation for purposes of deposition was only for specified topics.

1		Will testify.
2	Randy Mott	Mr. Mott is an Operations Supervisor and has
3	c/o Medora Marisseau	knowledge about the facts and circumstances
4	Karr Tuttle Campbell	regarding Plaintiff's employment, Plaintiff's
5	701 Fifth Avenue, Suite 3300	statements with him, and Plaintiff's claims and
6	Seattle, WA 98104	FedEx Freight's defenses in this case.
	c/o Sandra Isom	May testify.
	FedEx Freight, Inc.	
	1715 Aaron Brenner Drive, Ste 600	
	Memphis, TN 38120	
7	Ted Carlson	Ted Carlson is a Field Safety Advisor and has
8	c/o Medora Marisseau	knowledge about the facts and circumstances
9	Karr Tuttle Campbell	regarding Plaintiff's employment, Plaintiff's
10	701 Fifth Avenue, Suite 3300	statements with him, and Plaintiff's claims and
11	Seattle, WA 98104	FedEx Freight's defenses in this case.
	c/o Sandra Isom	May testify.
	FedEx Freight, Inc.	
	1715 Aaron Brenner Drive, Ste 600	
	Memphis, TN 38120	
12	Kenny Cass	Kenny Cass is a Road Driver Advisor and has
13	c/o Medora Marisseau	knowledge about the facts and circumstances
14	Karr Tuttle Campbell	regarding Plaintiff's employment, Plaintiff's
15	701 Fifth Avenue, Suite 3300	statements with him, and Plaintiff's claims and
16	Seattle, WA 98104	FedEx Freight's defenses in this case.
	c/o Sandra Isom	May testify.
	FedEx Freight, Inc.	
	1715 Aaron Brenner Drive, Ste 600	
	Memphis, TN 38120	
17	Kris Hoggatt	Kris Hoggatt is an Operations Supervisor and
18	c/o Medora Marisseau	has knowledge about the facts and
19	Karr Tuttle Campbell	circumstances regarding Plaintiff's employment,
20	701 Fifth Avenue, Suite 3300	Plaintiff's statements with him, and Plaintiff's
21	Seattle, WA 98104	claims and FedEx Freight's defenses in this
22		case.
	c/o Sandra Isom	May testify.
	FedEx Freight, Inc.	
	1715 Aaron Brenner Drive, Ste 600	
	Memphis, TN 38120	

1 2 3 4 5	Kaila Eckert, Paralegal to AKW <sup>7</sup> LAW, P.C. c/o Ada K. Wong AKW LAW, P.C. 6100 219 <sup>th</sup> St. SW, Suite 480 Mountlake Terrace, WA 98043	Records Custodian may be called to authenticate certain website publications of FedEx Freight parent company FedEx Corporation, documents produced to Plaintiff by FedEx Freight during discovery, and/or website information published by the federal government.  May testify.
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**(b) On behalf of Defendant:**

8 9 10	David Goldstine c/o Ada K. Wong AKW LAW, P.C. 6100 219 <sup>th</sup> St. SW, Suite 480 Mountlake Terrace, WA 98043	Mr. Goldstine is the plaintiff and has knowledge of his claims and the defenses in this lawsuit.  May testify.
11 12 13 14 15	David Appesland c/o Medora Marisseau Karr Tuttle Campbell 701 Fifth Avenue, Suite 3300 Seattle, WA 98104  c/o Sandra Isom FedEx Freight Freight, Inc. 1715 Aaron Brenner Drive, Ste 600 Memphis, TN 38120	Mr. Appesland is the Everett service center manager and has knowledge about the facts and circumstances regarding Plaintiff's employment, including job duties and physical qualifications, application for employment and performance and Plaintiff's statements to him and recertification issues, offers for reinstatement and job availability and Plaintiff's claims and FedEx Freight's defenses in this case.  Will testify.
16 17 18 19	Christy Tayman c/o Medora Marisseau Karr Tuttle Campbell 701 Fifth Avenue, Suite 3300 Seattle, WA 98104	Ms. Tayman is an employee relations advisor and has knowledge of her communications with Plaintiff, FedEx Freight's engagement in the interactive process, offers for reinstatement, and Plaintiff's claims and FedEx Freight's defenses in this case.

<sup>7</sup> Defendant objects to this witness who was not timely disclosed and was added as witness in this case for the first time today – October 28, 2020; was not disclosed in any initial disclosures as a witness and has no personal knowledge, so may not authenticate any documents of FedEx Corporation (or its subsidiaries). Plaintiff contends Ms. Eckert is a paralegal and record custodian who may be called to testify that the websites and online resources are what is claimed to be (i.e. statements by the authorized agent of FedEx Freight and government documents). *See* ER 901. This witness is necessitated per Defendant's objection to FRE 902 disclosure served on October 26, 2020. If Defendant stipulates to the authenticity of the following public records, Ms. Eckert's testimony is not required: 129, 130, 131, 132, 146, 155, 183, 184, 194, and 196.

1	c/o Sandra Isom FedEx Freight Freight, Inc. 1715 Aaron Brenner Drive, Ste 600 Memphis, TN 38120	Will testify
2		
3		
4	Randy Mott c/o Medora Marisseau Karr Tuttle Campbell 701 Fifth Avenue, Suite 3300 Seattle, WA 98104	Mr. Mott is an operations supervisor and has knowledge about the facts and circumstances regarding Plaintiff's employment, including Plaintiff's statements to him and, and Plaintiff's claims and FedEx Freight's defenses in this case.
5		Will testify
6	c/o Sandra Isom FedEx Freight Freight, Inc. 1715 Aaron Brenner Drive, Ste 600 Memphis, TN 38120	
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8		
9	Aaron Jessen c/o Medora Marisseau Karr Tuttle Campbell 701 Fifth Avenue, Suite 3300 Seattle, WA 98104	Mr. Jessen is an operations supervisor and has knowledge about Plaintiff's employment, including the facts and circumstances regarding Mr. Goldstine's statements to him and Mr. Mott on April 6 and 7, 2017.
10		
11		
12	c/o Sandra Isom FedEx Freight Freight, Inc. 1715 Aaron Brenner Drive, Ste 600 Memphis, TN 38120	Will testify.
13		
14		
15	Tammy Rogers c/o Medora Marisseau Karr Tuttle Campbell 701 Fifth Avenue, Suite 3300 Seattle, WA 98104	Ms. Rogers is a safety assistant and has knowledge about FedEx Freight's and the drivers' obligations regarding the Federal Motor Carrier Safety Act for driver medical certification, and facts and circumstances regarding Mr. Goldstine's medical examination forms and de-activation and eventual recertification and her actions regarding the same.
16		
17	c/o Sandra Isom FedEx Freight Freight, Inc. 1715 Aaron Brenner Drive, Ste 600 Memphis, TN 38120	Will testify.
18		
19		
20	Ted Carlson c/o Medora Marisseau Karr Tuttle Campbell 701 Fifth Avenue, Suite 3300 Seattle, WA 98104	Mr. Carlson was a regional safety advisor and has knowledge about FedEx Freight's and drivers' obligations for performing specified tasks required by the Federal Motor Carrier Safety Act and job duties and facts and circumstances regarding Mr. Goldstine's
21		
22		
23	c/o Sandra Isom	

1 2 3 4 5 6 7 8	FedEx Freight Freight, Inc. 1715 Aaron Brenner Drive, Ste 600 Memphis, TN 38120	deactivation including statements by Goldstine to Carlson.  Will testify.
9 10 11 12 13 14 15 16 17 18	Craig Flick c/o Medora Marisseau Karr Tuttle Campbell 701 Fifth Avenue, Suite 3300 Seattle, WA 98104  c/o Sandra Isom FedEx Freight Freight, Inc. 1715 Aaron Brenner Drive, Ste 600 Memphis, TN 38120	Mr. Flick is a security specialist and has knowledge of the investigation relating to Mr. Goldstine.  Will testify.
19 20 21 22 23	Katyna Naylor c/o Medora Marisseau Karr Tuttle Campbell 701 Fifth Avenue, Suite 3300 Seattle, WA 98104  c/o Sandra Isom FedEx Freight Freight, Inc. 1715 Aaron Brenner Drive, Ste 600 Memphis, TN 38120	Ms. Naylor is an employee relations manager and has knowledge about FedEx Freight's policies and procedures regarding disability discrimination, and medical disqualification and stand down, and FedEx Freight's self-disclosure process, and FedEx Freight's business records relating to Plaintiff and job availability and the role and responsibility of the employee relations advisor.  Will testify.
	Tamara Turner re: selected benefit topics, c/o Karr Tuttle Campbell, Seattle, WA 98104	May testify – Rebuttal; has knowledge re: select benefit topics relating to Plaintiff's damage claims
	Any other of Defendant's employees that plaintiff calls and examines in his case in chief and any of Plaintiff's witnesses.	Have knowledge about Plaintiff's claims and FedEx Freight's defenses in this case.  May testify.

## VII. EXHIBITS

### (a) Plaintiff's Exhibits

Plaintiff intends to present all exhibits in electronic format to jurors.

Plaintiff's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted

1	001	2017-04-11 Email from Goldstine to Cass and Carlson	No	No	Hearsay, Relevance, 403	
2	007	2017-01-09 Letter from FedEx Freight to Goldstine re Award	Yes	No	Relevance, 404	
3	009	2017-03-27 Accommodation and Nondiscrimination Policy	Yes	no	Relevance to the extent this exhibit contains Transfer policy	
4						
5						
6						
7						
8	012	2017-04-10 @ 11:21 p.m. PST Email from Appesland to Tayman	yes	Yes	Duplicate of D's 316 which is a better copy	
9						
10	013	2017-04-11 @ 8:05 a.m. PST Email from Appesland to Appesland	yes	No	Includes inadmissibl e hearsay	
11	017	2017-04-11 @ 1:32 p.m. PST Email from Flick to Tayman	Yes	No	Inadmissibl e Hearsay	
12	018	2017-04-11 @ 11:48 a.m. PST Email from Tammy Rogers to Appesland re DOT Physical required	Yes	Yes (duplicate of D's 307)		
13						
14	019	2017-04-11 @ 12:28 p.m. PST Email from Tayman to Carlson	Yes	Yes (duplicate of D's 354)		
15						
16	020	2017-04-11 Goldstine Statement re 4-6-2017	N- unsigned and header stripped out	No-	Incomplete 901.	
17	021	2017-04-11 Goldstine Statement re 4-7-2017	Yes	No -	Inadmissibl e hearsay	
18	022	2017-04-12 @ 12:57 p.m. PST Email from Carlson to Tayman re FedEx Freight medical decertification 4-11-2017	Yes	No	Inadmissibl e hearsay	
19						
20						
21	024	2017-04-12 @ 10:59 p.m. PST Email from Cass to Tayman	Yes	No	Inadmissibl e hearsay	
22						
23						

1	025	2017-04-12 @ 4:55 p.m. PST Email from Goldstine to Carlson	Yes	No	Inadmissibl e hearsay	
2	026	2017-04-13 @ 10:27 a.m. PST Email from Goldstine to Appesland	Yes	Yes		
3	028	2017-04-13 @ 5:48 p.m. PST Email from Appesland to Tayman	Yes	yes		
4	029	2017-04-13 @ 11 p.m. PST Email from Cass to Carlson	Yes	No	Inadmissibl e hearsay; duplicate of P's 24	
5	030	2017-04-13 @ 8:43 p.m. PST Email from Goldstine to Appesland and Mott	Yes	Yes		
6	032	2017-04-13 @ 12:14 p.m. PST Email from Tayman to Carlson	Yes	Yes		
7	034	2017-04-16 @ 10:35 p.m. PST Email from Cass to Appesland	Yes	No	Inadmissibl e hearsay	
8	035	2017-04-17 @ 5:32 p.m. PST Email from Appesland to Tayman	Yes	Yes		
9	036	2017-04-17 @ 2:25 p.m. PST Email from Flick to Tayman	Yes	No	Multiple levels of inadmissibl e hearsay	
10	037	2017-04-17 @ 2:50 p.m. PST Email from Goldstine to Appesland	Yes	Yes- included in P's 35		
11	038	2017-04-17 @ 6:32 a.m. PST Email from Tammy Rogers to Appesland re DOT Physical required	Yes	Yes-		
12	039	2017-04-17 @ 5 p.m. PST Email from Tayman to Appesland	Yes	Yes		
13	040	2017-04-18 @ 2:29 p.m. PST Email from Flick to Tayman	Yes	No	Multiple levels of inadmissibl e hearsay	



1	041	2017-04-18 Kris Hoggatt Notes re 4-18-2017 meeting	Yes	No	Hearsay	
2	042	2017-04-19 Email from Crow to Appesland, Tayman, and Fredrick	no	No	Relevance, Incomplete not the authentic document; portions of document removed by counsel, Hearsay, 403	
3						
4						
5						
6						
7						
8	043	2017-04-20 @ 6:41 p.m. PST Goldstine Request for & documents related to knee injury, etc.	no	no	901, 403, relevance, multiple levels of inadmissibl e hearsay, subject to MIL	
9						
10						
11						
12	046	2017-04-24 @ 3:29 p.m. PST Email from Flick to Tayman (Redacted)	no	no	Redacted by P; hearsay	
13	047	2017-04-24 @ 7:31 p.m. PST Email from Goldstine to Rogers, Tayman, Appesland	yes	yes		
14						
15	050	2017-04-25 @ 1:41 p.m. PST Email from Goldstine to Rogers, Tayman, and Ferrill	yes	yes		
16	051	2017-04-25 @ 1:41 p.m. PST Email from Goldstine to Rogers, Tayman, Appesland	yes	Duplicate of P's Ex. 50		
17						
18	052	2017-04-27 @ 8:03 am Email from Crow to Appesland and Tayman	yes	no	Hearsay, relevance, 403	
19	054	2017-04-27 @ 3:10 p.m. PST Email from Appesland to Goldstine and Tayman	Yes	No, pending MIL submitted by P	403; relevance if WPV incidents are excluded	
20						
21						
22	056	2017-04-27 @ 12:18 p.m. PST Email from Goldstine to	Yes	No,	hearsay	
23						



	Ferrill, Appesland, Rogers, Starkey, and Tayman				
057	2017-04-27 @ 2:09 p.m. PST Email from Goldstine to Tayman	yes	No, pending MIL submitted by P	403, relevance if WPV incidents are excluded	
058	2017-04-28 @ 1:20 p.m. PST Email from Goldstine to Tayman	Yes	No, pending MIL submitted by P	403, relevance if WPV incidents are excluded	
059	2017-04-28 @ 4:17 p.m. PST Email from Goldstine to Tayman, Ferrell, Starkey, Rogers, and Appesland	Yes	No	Hearsay	
062	2017-05-01 @ 6:44 p.m. PST Email from Tayman to Goldstine	yes	No	Relevance and hearsay	
063	2017-05-02 @ 4:40 p.m. PST Email from Flick to Tayman	yes	no	Multiple levels of inadmissible hearsay, relevance, 403, in light of P's MIL	
064	2017-05-02 @ 4:47 p.m. PST Email from Tayman to Flick	yes	no	Multiple levels of inadmissible hearsay, relevance & 403 in light of P's MIL	
065	2017-05-03 Email from Tayman to Goldstine	yes	yes		
066	2017-05-08 Email from Goldstine to Appesland	yes	yes		
068	2017-05-22 @ 1:08 p.m. PST Email from Goldstine to Flick	Yes	No	Hearsay, relevance, 403 in light of P's MIL	

1	073	2017-05-31 @ 553 am PST Email from Goldstine to Tayman, Rogers	Yes	No	Hearsay	
2	076	2017-06-11 Email from Goldstine to Appesland	yes	no	hearsay	
3	088	2017-07-10 Email from Goldstine to Appesland	yes	no	hearsay	
4	089	2017-07-11 @ 939 a.m. PST Email from Appesland to Barrett	yes	no	Hearsay; Untimely- deadline to disclose exhibits was 10/5/20- not part of disclosed exhibits until 10/28/20;; Unredacted Version Contains Attorney- Client Privileged Informatio n <sup>8</sup>	
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15	090	2017-07-11 @ 6:27 p.m. PST Email from Goldstine to Appesland	yes	no	hearsay	
16	091	2017-07-12 FedEx Freight Notified of Goldstine WHRC Charge of Discrimination	no	no	901, 403, relevance, hearsay	
17						
18	092	2017-10-06 Email from Flick to Appesland and Tayman	No	No	403, relevance, hearsay	
19						
20	096	2017-08-11 Email from Tayman to Hoggatt, Mott, and Jessen	yes	no	403, in light of P's MIL	

<sup>8</sup> Exhibit 89 was timely disclosed. Prior version that was withdrawn is the same as this current version except this current version does not have Christy Tayman's handwritten notes. This was subsequently withdrawn in error, and a clean version has been returned to this PTO without handwriting. There is no prejudice to Defendant. No attorney is part of this e-mail and it is not subject to attorney-client privilege.

1	098	FedEx's contribution history for Goldstine's fringe benefits	yes	yes		
2	100	Driver Stand Down, Disqualification, and Re-Qualification Procedures	yes	yes		
3	101	Driver Stand Down, Disqualification, and Re-qualification Procedures	yes	yes		
4	105	2013-07-26 Driver Manual Lesson 3 - Vehicle Inspection Procedures	yes	yes		
5	107	2015-04-15 Pre-Shift Raising and Lowering Trailer Doors	yes	yes		
6	108	2015-07-15 Driver Manual Lesson 2- Safety	yes	yes		
7	109	2015-07-15 Driver Manual Lesson 4 - Driver Review and Disqualification	yes	yes		
8	110	2017 Accommodation and Nondiscrimination Policy	Yes	Yes		
9	113	2018-05-02 Equal Employment Opportunity-Non-Discrimination Policy	No	No	Juror confusion; Untimely-deadline to add exhibits was 10/5/20-not disclosed as an exhibit until 10/28/20; Relevance as this is a 2018 policy;; There was an earlier EEO policy; contains two separate documents;	
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				901 as to last 3 pages. <sup>9</sup>	
114	2016-02-12 Medical Exam Report Form	yes	yes		
116	2017-02-02 Medical Exam Report Form	yes	yes		
117	2017-02-02 US HealthWorks Medical Group Treatment Authorization Form	yes	yes		
118	2017-03-09 Medical Examiner Report Form	yes	yes		
119	2017-03-09 thru 2017-04-20 US HealthWorks Medical Group Notes	No	No	901, multiple levels of inadmissible hearsay	
121	2017-04-13 Medical Exam Report Form	yes	yes		
122	2017-04-18 US HealthWorks Medical Group Treatment Authorization Form	yes	yes		
123	2017-04-20 Medical Exam Report Form	yes	no	Relevance, hearsay	
124	2017-06-13 Treatment Authorization for Goldstine signed by Appesland	yes	yes		
125	2017-06-15 Medical Exam Report Form	Yes	Yes		
126	2017-06-15 Medical Exam Report Form signature page				
127	2018-05-18 Medical Examiner's Certificate signature page	No	No	901, incomplete document	
129	Benefits Planner Retirement Age Calculator SSA [wwwssa.gov]	no	no	901, hearsay, relevance, juror confusion	
130	Benefits Planner Retirement Age Calculator SSA [wwwssa.gov]	no	no	901, hearsay, relevance,	

<sup>9</sup> Plaintiff substituted an earlier version to correct Defendant's objection as to the year of the non-discrimination policy.

				juror confusion	
131	Delayed Retirement SSA Benefit Maximum Reached	no	no	901, hearsay, relevance, juror confusion	
132	Full Retirement Age Reached (67)	no	no	901, hearsay, relevance, juror confusion	
134	2015 Benefits Enrollment	yes	No (duplicate of 133)	Relevance	
136	2015-02-15 Benefits Offered by FedEx Freight, Inc.	Yes	No	Relevance	
137	2016 Benefits Enrollment Confirmation	yes	No	Relevance	
140	2016 New Hire Benefits Enrollment Guide	Yes	No	Relevance	
142	2017 New Hire Benefits Enrollment Guide	Yes	Yes		
143	2017-05-15 COBRA Continuation Coverage Election Notice	Yes	No	Relevance	
144	2017-10-26 FedEx Freight Statement to Goldstine re Pension Plan	Yes	Yes		
145	2020-01-01 Kaiser Permanent Summary of Benefits and Coverage	No	No	901, incomplete, relevance, 403, hearsay	
146	2020-09-02 Average life expectancy for Dave is 82.3 years	no	no	901, hearsay, 403	
147	2016-09-04 Evergreen Radia Imaging Records	no	no	901, 403, multiple levels of hearsay, subject to D's MIL	
148	2016-09-04 EvergreenHealth Medical Records	no	no	901, 403, multiple	

				levels of hearsay, subject to D's MIL	
149	2019-09-30 Urology Office Medical Records	no	no	901, 403, multiple levels of hearsay, subject to D's MIL	
150	2019-10-15 Halvorson Cancer Center letter	no	No	901, 403, multiple levels of hearsay, subject to D's MIL	
151	EVT - Dave Appesland recording	Yes	No	Hearsay	
152	EVT - David Goldstine recording	Yes	No	Hearsay	
153	2020-09-08 FINAL Tapia Report Chart	No- chart is contrary to what was represented would be provided	No	Hearsay, 403	
154	Outstanding RSI Performance Award from FedEx Freight to Goldstine	Yes	No	Relevance	
155	2014-09-30 EEOC Files Disability Discrimination Complaint against FedEx Ground	No-relates to a different company	No	901, 403, hearsay, relevance,s subject to D's MIL	
156	2015 thru 2017 Goldstine W-2s	Yes	No	relevance	
157	2015-01-27 Driving Skills Observation Report for Goldstine	yes	no	relevance	
158	2015-01-27 Voluntary Self-Identification of Disability	yes	no	Relevance, 403	
165	2017-02-17 Certificate of Achievement Safety Award to Goldstine	yes	no	Hearsay, relevance, 403	

1	168	2017-04-07 Photos of Vehicle #2501926	no	no	901, relevance, 403	
2	169	2017-04-13 5th wheel invoice	yes	no	Relevance, 403	
3	171	2017-06-05 Washington State Human Rights Commission Intake Questionnaire	no	no	901, relevance, hearsay, 403	
4	172	2017-07-25 Voicemail from Appesland to Goldstine	no	no	901, hearsay, 403	
5	173	2017-07-27 Voicemail from Appesland to Goldstine	no	no	901, hearsay, 403	
6	175	2017-08-17 Voicemail from Flick to Goldstine	no	no	901, hearsay, 403	
7	176	2018 Goldstine's 1040	yes	no	Relevance,	
8	177	2018 Goldstine's W-2	yes	no	relevance	
9	178	2018 Goldstine's W-2 short	yes	no	relevance	
10	179	2018-08-27 FedEx Freight's Responses to Plaintiff's 1st Requests for Admission	no	no	Improper use of RFAs; contains legal opinions and conclusions ; Relevance, overbroad, 403	
11	182	2019-05-24 FedEx Freight's Responses to Plaintiff's 2nd Requests for Admission	no	no	Improper use of RFAs; contains legal opinions and conclusions ; Relevance,	
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				overbroad, 403	
183	Certified Copy of FedEx Corporation Annual Report 2020	no	no	901, hearsay, relevance, overbroad, 403, subject to D's MIL	
184	FedEx Organizational Chart	no	no	901, 403, relevance, hearsay, subject to D's MIL	
185	Photo: Everett Service Center FedEx Freight Truckyard	no	no	901, relevance, 403	
186	Photo Everett Service Center FedEx Freight Truckyard II	no	no	901., 403, relevance	
187	Photo Everett Service Center FedEx Freight Trucks	no	no	901, 403, relevance	
188	Photo Everett Service Center Stairs	no	no	901, 403, relevance	
189	Photo Everett Service Center Loading Ramp	no	no	901, 403, relevance	
190	Photo FedEx Freight Trailer to Dock	no	no	901., 403, relevance	
191	Photo FedEx Freight Loading Dock (Interior View)	no	no	901, 403, relevance	
192	Photo FedEx Door Seal	no	no	901, 403, relevance	
193	Photo FedEx Door Seal II	no	no	901. 403, relevance	
194	2020-05-18 - Consent Decree (Civil Action No. 15-cv-00256)	No- relates to a different company	no	901, 403, hearsay, relevance, subject to D's MIL	
196	FedEx Company Structure & Facts <sup>10</sup>	No- relates to different companies	No	901, 403, relevance, hearsay, and subject to D's MIL	

<sup>10</sup> <https://www.fedex.com/en-us/about/company-structure.html>



1	197	Declaration of Randy Mott	Yes	No	Objection: deadline to identify exhibits was 10/5/2020. No new exhibits may be added.	
2						
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6	198	2017-06-15 – June Certification re No Signature	No	No	Objection: untimely: deadline to identify exhibits was 10/5/2020. No new exhibits may be added; 901	
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**(b) Defendants' Exhibits**

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14	<b>Exhibit No.</b>	<b>Description</b>	<b>Authenticity</b>	<b>Admissibility</b>	<b>Objection</b>	<b>Admitted</b>
15						
16	300	02-02-17 DOT Medical Examination Report	Y	Y		
17	301	02-02-17 Federal Medical Examiners Certificate	Y	Y		
18						
19	302	02-16-17 Dr Feldhegger Note to Goldstine Re Diabetes	Y	Y		
20	303	03-09-17 Addendum to 02-02-17 Medical Report	Y	N	Incomplete	
21						
22	304	03-09-17 Federal Medical Examiners Certificate	Y	Y		
23						

1	305	04-13-17 DOT Medical Examination Report	Y	Y		
2	306	06-15-17 DOT Medical Examination Report	Y	Y	Possibly incomplete	
3			Possibly incomplete			
4	307	04-11-17 Rogers Email String to Appesland Re DOT Physical Required <sup>11</sup>	Y	N	801, 802; Y with 105 limiting instruction on non-hearsay purpose	
5						
6						
7						
8	308	04-17-17 Rogers Email to Appesland Re 4-13 Medical Exam	Y	N	Hearsay; Legal conclusion; Fed. R. Evid. 403; subject to MIL	
9						
10						
11	309	07-21-17 Rogers Email to Appesland Re Unsigned Medical Certification	Y	N	Hearsay; Legal conclusion; Fed. R. Evid. 403; subject to MIL	
12						
13						
14						
15	310	07-21-17 Rogers Email to Appesland Re Correcting Report_Redacted	Y	N	Hearsay; Relevance; Foundation ; Legal Conclusion ; Fed. R. Evid. 403; subject to MIL	
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<sup>11</sup> Defendant's descriptions are commentaries on the evidence, prejudicial, and should not be allowed. Plaintiff asked Defendant twice to provide a neutral description, to which the Defendant has refused. Plaintiff requests that any documents provided to the jury contain only neutral descriptions.

1	311	07-25-17 Rogers Email to Appesland Re Receipt Of <del>Compliant</del> Medical Certification_Redacted <sup>12</sup>	Y	N	Hearsay; Legal conclusion; Fed. R. Evid. 403; subject to MIL	
2	312	04-07-17 Mott Email to Appesland Re <del>Not Closing</del> Trailer Door <sup>13</sup>	Y	Y		
3	313	04-10-17 Jessen Email to Appesland Re Trailer Door	Y	Y		
4	314	04-10-17 Appesland Email to Tayman Re Requesting Statement	Y	Y		
5	315	04-10-17 Appesland Email to Appesland Re Jessen Recap Of 04-06-17	Y	Y		
6	316	04-11-17 Tayman Notes Re Call With Goldstine	Y	Y		
7	317	05-03-17 Tayman Email to Goldstine Re Statement For Doctor	Y	Y		
8	318	04-12-17 Carlson Email to Tayman Re 04-06-17 Incident	Y	Y		
9	319	Withdrawn				
10	320	Road Driver Job Description	Y	Y		
11	321	Withdrawn				
12	322	Withdrawn				

<sup>12</sup> See footnote 14.

<sup>13</sup> See footnote 14.

1	325	Withdrawn				
2	326	08-03-17 Dolan Email to Wong Re <del>Return to Work</del> <del>Authorization</del> <sup>14</sup>	Y	N	Hearsay; Not 803(6) business record b/c prepared in subjective contemplati on of litigation; Legal Conclusion s; “PRIVILE GED AND CONFIDE NTIAL” as marked by attorney author; subject to MIL; relevance; Court’s Prior Ruling on Plaintiff’s MIL	
3	327	08-03-17 Certified Letter to Goldstine Re <del>Return To</del> Work <sup>15</sup>	N	N	Hearsay Y, with 105 limiting instruction	
4	328	08-07-17 To 08-09-17 Fedex Tracking Emails	Y	Y		
5	329	08-18-17 Dolan Email to Wong Re <del>Goldstine Refusal</del>	Y	N	Hearsay; Not 803(6) business	

<sup>14</sup> See footnote 14.

<sup>15</sup> See footnote 14.

1		to Communicate Communications <sup>16</sup>			record b/c prepared in subjective contemplati on of litigation; Legal Conclusion s; “PRIVILE GED AND CONFIDE NTIAL” as marked by attorney author; subject to MIL; relevance; Court’s Prior Ruling on Plaintiff’s MIL	
2						
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13	330	Receipts For Fedex Letter Delivery Attempts	Y	Y		
14						
15	331	Withdrawn				
16						
17	332	04-18-19 Tayman Notes Re Goldstine Communication (Dep Ex 7)	N	N	Hearsay; 403, due to Collateral Source Rule; Refusal to designate 30(b)(6) representati ve on topic; Relevance; Unredacted SSN;	
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<sup>16</sup> See footnote 14.

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2					
3	333	04-17-19 Tayman Notes Re <del>Changes to the Story</del> (Dep Ex 9) <sup>17</sup>	Y	Y	
4	334	EVT- Aaron Jesson Recording.MP3	Y	N	Hearsay; Fed. R. Evid. 403; lack of personal knowledge
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6					
7	335	EVT - Randy Mott Recording.MP3	Y	N	Hearsay; Fed. R. Evid. 403; lack of personal knowledge
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10	336	04-11-17 Mott Email to Appesland Re Requesting Goldstine Statement	Y	Y	
11					
12	337	Withdrawn			
13					
14	338	04-19-17 Flick Email to Tayman Re Witness Interviews	Y	N	Hearsay; lack of personal knowledge; Fed. R. Evid. 403
15					
16	339	04-20-17 Flick Email to Tayman Re Additional Mott Info	Y	N	Hearsay; lack of personal knowledge; Fed. R. Evid. 403
17					
18					
19	340	Withdrawn			
20					
21	341	Withdrawn			
22					

<sup>17</sup> See footnote 14.

1	342	Withdrawn				
2	343	04-20-17 Flick Memo to Moore Re Investigative Summary_Redacted	Y	N	Hearsay; Relevance; Fed. R. Evid. 403; subject to MIL regarding firearm and past unsubstantiated workplace violence investigation.	
3					Handwritten statement by Burger regarding “gun” – 403, lack of personal knowledge	
4	344	Goldstine Job App with Electronic Signature	Y	N	403 as to “accident records”; relevance	
5	345	FMSCA Medical Examiner Handbook (1-30)	Y	N	Hearsay, 403 juror confusion, legal conclusion; 401 Relevance; Statement of Law is for the Court.	
6	346	FMSCA Medical Examiner Handbook (39-42)	Y	N	Hearsay, 403 juror confusion,	

1					legal conclusion; 401 Relevance; Statement of Law is for the Court.	
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5	347	FMSCA Medical Examiner Handbook (51-52)	Y	N	Hearsay, 403 juror confusion, legal conclusion; 401 Relevance; Statement of Law is for the Court.	
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11	348	FMSCA Medical Examiner Handbook (167-173)	Y	N	Hearsay, 403 juror confusion, legal conclusion; 401 Relevance; Statement of Law is for the Court	
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16	349	FMSCA Skill Performance Evaluation Certification - Sample Initial Letter of Application	Y	N	Hearsay, 403 juror confusion, legal conclusion; 401 Relevance – this case does not involve a Skills Performanc e Evaluation; Statement	
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				of Law is for the Court	
350	Withdrawn				
351	Everett Service Center Medical Recertifications	N	N	Hearsay, Relevance; Fed. R. Evid. 403; lack of personal knowledge	
352	06-06-17 Kingston Email to Goldstine Re Document Request <sup>18</sup>	Y	N	Hearsay; and Hearsay within HearsayFe d. R. Evid. 403; lack of personal knowledge; reference to being “banned” is subject of MIL	
353	<del>Workplace Violence</del> Complaint Complaint re Threat <sup>19</sup>	N	N	Hearsay; Relevance; Fed. R. Evid. 403; prior unsubstanti ated workplace violence investigatio n is subject to MIL	
354	04-11-17 Tayman Email to Carlson Re Goldstine Claim As Disabled American	Y	Y		

<sup>18</sup> See footnote 14.<sup>19</sup> See footnote 14.

1	355	Withdrawn				
2	356	04-25-17 Appesland Email to Appesland Re Goldstine Call	Y	Y		
3	357	07-26-16 Appesland Email to Appesland Re Goldstine <del>Late</del> Departures <sup>20</sup>	Y	N	Relevance; 403; 405/608 Character Evidence & Improper Impeachme nt by specific instances of conduct through extrinsic evidence; subject of Court MIL ruling excluding conduct unrelated to termination ;	
4						
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16	358	04-25-17 Flick Email to Tayman Re <del>Workplace</del> <del>Violence</del> Investigation_Redacted <sup>21</sup>	Y	N	Hearsay; Relevance; Fed. R. Evid. 403; subject to MIL	
17						
18						
19	359	05-13-17 Tayman Handwritten Note Re Goldstine <del>Canceled</del> Appointment <sup>22</sup>	N	N	Hearsay; Not 803(6) business record b/c prepared in	
20						
21						

<sup>20</sup> See footnote 14.

<sup>21</sup> See footnote 14.

<sup>22</sup> See footnote 14.

				subjective contemplation of litigation; Legal Conclusions; Fed. R. Evid. 403	
360	2015 And 2016 Medical Examination Reports_Redacted	Y	N	Private identification information should be redacted <sup>23</sup>	
361	07-31-17 Appesland Email to Tayman Re Goldstine Failure To Return	Y	Y		
362	07-27-17 Appesland Email to Crow Re Goldstine <del>Did Not Call Back</del> <sup>24</sup>	Y	Y		
363	08-11-17 Tayman Email to Arashiro Re Goldstine <del>Failure To Return—Termination</del> <sup>25</sup>	Y	Y		
364	Withdrawn				
365	Withdrawn				
366	04-20-17 Appesland Email to Tayman Re Goldstine <del>Did Not Follow Up</del> <sup>26</sup>	Y	N	Hearsay; Fed. R. Evid. 403; relevance	
367	06-12-17 Goldstine Email to Appesland Re Dot Permission Slip	Y	Y		

<sup>23</sup> This has been addressed

<sup>24</sup> See footnote 14.

<sup>25</sup> See footnote 14.

<sup>26</sup> See footnote 14.

1	368	06-13-17 Goldstine Email to Appesland Re Treatment Authorization	Y	N	Relevance; Fed. R. Evid. 403 juror confusion	
2						
3	369	Reasonable Accommodation Review (RAR) Procedures	Y	N	Relevance; Fed. R. Evid. 403 juror confusion	
4						
5	370	2017 Accommodation And Nondiscrimination Policy	Y	Y		
6						
7	371	04-11-17 US Healthworks Medical Group Treatment Authorization Form	Y	Y		
8						
9	372	08-10-17 Corrective Action Recap Form - Termination	Y	N	Hearsay	
10						
11	373	Attachment 1 to Partin Report_Redacted	Y	N	Violates collateral source rule <sup>2728</sup>	
12						
13	374	FMSCA Medical Examiner Handbook - Complete Copy	Y	N	Hearsay; 403 juror confusion; legal conclusion; 401 Relevance; Statement of Law is for the Court.	
14						
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18	375	05-31-17 Tayman Email to Goldstine Re Investigation Status_Redacted	Y	N	Hearsay; Not 803(6) business record b/c prepared in subjective	
19						
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<sup>27</sup> Unemployment compensation and workers' compensation benefits are not an offset against an award of damages for economic loss because they come from a collateral source. *Hayes v. Trulock*, 51 Wn.App. 795, 803–04, 755 P.2d 830 (1988); *Johnson v. Weyerhaeuser Co.*, 134 Wn.2d 795, 799–800, 953 P.2d 800 (1998). (COMMENT TO WPI 330.81).

<sup>28</sup> This has been addressed in redacted document.

				contemplati on of litigation; Legal Conclusion s; Fed. R. Evid. 403 <sup>29</sup>	
376	04-11-17 Appesland Email to Appesland Re Goldstine Statement about Thurs 4-6	Y	N	Hearsay <sup>30</sup>	
377	04-11-17 Appesland Email to Appesland Re Requesting Goldstine Statement <sup>31</sup>	Y	N	Hearsay <sup>32</sup>	

### VIII. ACTION BY THE COURT

- (a) This case is scheduled for trial before a jury on November 2, 2020, at 9:00 a.m.<sup>33</sup>
- (b) Supplemental Trial briefs shall be submitted to the court on or before October 21, 2020.
- (c) Suggested questions of either party to be asked of the jury by the court on *voir dire* shall be submitted to the court on or before October 28, 2020.
- (d) Plaintiff requests a Supplemental Jury Questionnaire to be provided to the jurors, which will be filed with the court on October 28, 2020.
- (e) The parties will be making further recommendation and seeking further guidance regarding the processes for the remote jury trial.

<sup>29</sup> Plaintiff has waived any objection to this exhibit. This was Plaintiff's Exhibit 71 in the Pretrial Order filed on October 16, 2020. Dkt. # 268.

<sup>30</sup> Plaintiff has waived any objection to this exhibit. This was Plaintiff's Exhibit 14 in the Pretrial Order filed on October 16, 2020. Dkt. 268.

<sup>31</sup> See footnote 14.

<sup>32</sup> Plaintiff has waived any objection to this exhibit. This was Plaintiff's Exhibit 14 in the Pretrial Order filed on October 16, 2020. Dkt. 268

<sup>33</sup> Defendant FedEx Freight filed an objection to proceeding with the remote jury trial, which the Court has denied. Defendant does not waive its objection to the remote jury trial proceeding.

1 (f) This order has been approved by the parties as evidenced by the signatures of their counsel.

2 This order shall control the subsequent course of the action unless modified by a  
3 subsequent order. This order shall not be amended except by order of the court pursuant  
4 to agreement of the parties or to prevent manifest injustice.

5  
6 DATED this 2nd day of November, 2020.

7  
8 

9  
10 The Honorable Marsha J. Pechman  
United States District Judge

11  
12 FORM APPROVED:

13 AKW LAW, P.C.

14 /s/ Ada K. Wong  
15 Ada K. Wong, WSBA #45936  
Attorney for Plaintiff Goldstine

16  
17 BLOOM LAW PLLC

18 /s/ Beth Bloom  
19 Beth Bloom, WSBA #31702  
20 Attorney for Plaintiff Goldstine

21 KARR TUTTLE CAMPBELL

22 /s/ Medora A. Marisseau  
23 Medora A. Marisseau, WSBA #23114

**FOURTH AMENDED PRETRIAL ORDER - 38**  
Case No. 2:18-cv-01164-MJP

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4 /s/ Sandra C. Isom  
5 Sandra C. Isom, CA Bar #157374  
Attorney for Defendant